

Remarks/Arguments

The Applicant would like to thank Examiner Williams for the interview granted on August 3, 2007. This Response is provided in response to the Office Action mailed May 3, 2007, in which the Examiner rejected claims 1-21 under 35 U.S.C. §102(b) as being anticipated by the prior art, and further rejected claims 2-4, 9-11, and 16-18 under 35 U.S.C. §101. In view of the present remarks and amendments, the Applicant believes that claims 1-29 are presently in condition for allowance.

Claim Amendments

The Applicant has provided amendments to claims 1-4, 8-11, and 15-18 in response to the non-final Office Action mailed May 3, 2007. The amendments do not narrow the scope of claims but rather have been made to more clearly point out and distinctly the subject matter considered by the Applicant as the invention. Further, no new matter has been introduced by the claim amendments and support for the amendments may be found by viewing FIGS. 4, 5, and 9, with specific attention to reference numerals 32 and 50.

Rejection of Claims 2-4, 9-11, and 15-18 Under 35 U.S.C. §101

The Office Action rejected claims 2-4, 9-11, and 15-18 under 35 U.S.C. §101, as being directed to non-statutory matter.

To obviate this rejection, the Applicant has amended claims 2-4, 9-11, and 15-18 to clarify claims to provide explicit structure recitations. Specifically, the recitations “ergonomically shaped to accommodate” has been added to claims 2-4, 9-11, and 16-18 to more clearly demonstrate the structure of the invention of the Applicant.

Claim 15 was also rejected under §101 for being drawn to claiming part of a user’s hand. The Applicant has reviewed claim 15 and is unable to determine why the Examiner stated that claim 15 is drawn to non-statutory matter. Claim 15 is drawn to similar subject matter as claims 1 and 8 which did not receive a §101 rejection for being drawn to non-statutory subject matter. The Applicant is assuming that the Examiner merely made a error in the numbering of 101 rejected claims, however if this assumption is inaccurate,

Applicant requests further clarification as to why claim 15 is directed to non-statutory subject matter.

In light of the amendments which more clearly point out the structure of the invention, the Applicant respectfully requests that the Examiner withdraw the §101 rejections of claims 2-4, 9-11, and 15-18. Furthermore, if any of the rational remains for the claims to be rejected under §101, the Applicant respectfully requests detailed description as to why the claimed subject matter is deemed non-statutory in nature.

Rejection of Claims 1-7 and 15-21 Under 35 U.S.C. §102(b)

In the Office Action mailed May 3, 2007, the Examiner rejected claims 1-7 and 15-21 under 35 U.S.C. §102(b) as being anticipated by United States Design Patent No. D470,662, issued to Alzheimer et al, (Alzheimer). The Applicants respectfully traverse this rejection.

Legal Precedent

Anticipation means a lack of novelty, and is a question of fact which is reviewed by the reviewing court using a substantial evidence standard. *Brown v. 3M*, 60 USPQ2d 1375 (Fed. Cir. 2001); *Baxter Int'l, Inc. v. McGaw, Inc.*, 47 USPQ2d 1225 (Fed. Cir. 1998). To anticipate a claim, every limitation of the claim must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 58 USPQ2d 1286 (Fed. Cir. 2001). *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 122 S.Ct. 1831 (2002). Each such limitation must be found either expressly or inherently in the prior art reference. *Schering Corporation v. Geneva Pharmaceuticals, Inc.*, 02-1540, Decided August 1, 2003 (Fed. Cir. 2003). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

The cited reference fails to show an appendage support member having a substantially continuous convex shaped surface over a majority of the bottom surface as recited by independent claims 1 and 15.

Independent claims 1 and 15 recite an “appendage support member having a substantially continuous convex shaped surface over a majority of the bottom surface.” This continuous convex shaped surface is illustrated at least in figures 4 and 5 reference 32, directed to the support member. As seen in the aforementioned figures, the member has a substantially continuous convex shaped surface over a majority of the bottom surface.

Conversely, the Examiner has pointed specifically to Figure 5 of Altheimer as teaching the convex portion over the bottom of the surface of the support member. While the Applicant does not necessarily agree with this reading of Altheimer, to further prosecution, the Applicant has added the limitation that the support member has a substantially continuous convex shaped surface over a majority of the bottom surface. As clearly shown in Figure 5 of Altheimer, the convex shaped surface of the bottom of the support member constitutes a very small portion of the bottom surface, and in no way approaches a majority of the bottom surface of the support member. Therefore, Altheimer fails to anticipate claims every limitation recited in independent claims 1 and 15.

Furthermore, based at least upon their dependency to claims 1 and 15, dependent claims 2-7 and 16-21 are not anticipated by Altheimer. For at least these reasons among others, the Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 102, and passage of claims 1-7 and 16-21 to allowance.

Rejection of Claims 8-14 Under 35 U.S.C. §103(a)

The Office Action further rejected claims 8-14 under 35 U.S.C. §103(a) as being unpatentable over Altheimer in view of United States Patent No. 6,145,151 issued to Herron et al., (Herron). This rejection is respectfully traversed.

Legal Precedent

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). The Supreme Court has recently stated that, “[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its

elements was, independently, known in the prior art,” and that “A court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.” *KSR Intern. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1731.

The cited references, taken alone or in combination, fail to teach or suggest features recited by claims 8-14.

In a similar manner to that discussed above in the section titled “Rejection of Claims Under 35 U.S.C. §102(e)”, Alzheimer fails to teach or suggest the amended limitations of claim 8, namely, an “appendage support member having a substantially continuous convex shaped surface over a majority of the bottom surface.” Herron further fails to supply a teaching or suggestion of an “appendage support member having a substantially continuous convex shaped surface over a majority of the bottom surface.” Thus, neither Alzheimer nor Herron, taken alone or in combination, teach or suggest the limitations of claim 8.

Furthermore, due to at least the dependencies of claims 9-14 on independent claim 8, the cited references, taken alone or in hypothetical combination, cannot render obvious claims 9-14. For at least these reasons, the Applicants request withdrawal of the rejection of claims 8-14 under 35 U.S.C. §103(a), and passage of same to allowance.

Conclusion

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the Office Action mailed May 3, 2007.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorney.

Respectfully submitted,

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